

ORIGINAL

OPEN MEETING AGENDA ITEM



0000135373

BEFORE THE ARIZONA CORPORATION (RECEIVED

COMMISSIONERS

GARY PIERCE, Chairman
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS

2012 MAR 23 P 2:53

AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission
DOCKETED

MAR 23 2012

DOCKETED BY

IN THE MATTER OF THE FORMAL
COMPLAINT OF SWING FIRST GOLF,
LLC, AGAINST JOHNSON UTILITIES,
LLC.

DOCKET NO. WS-02987A-08-0049

**NOTICE OF FILING
PLEADINGS, RULINGS, MINUTE
ENTRIES AND ORDERS FILED IN
SUPERIOR COURT CASE SINCE
JANUARY 27, 2012**

In the Amended Procedural Order dated February 17, 2012, the administrative law judge ordered the parties to docket copies of "documents, rulings, minute entries, or orders filed in or issued by [the] Superior Court" in *Johnson Utilities, LLC, et al. v. Swing First Golf, LLC, et al.* (Cause No. CV2008-000141). In compliance with this order, Johnson Utilities LLC hereby files a copy of Plaintiffs' Notice of Lodged Proposed Jury Instructions.

RESPECTFULLY submitted this 23rd day of March, 2012.

BROWNSTEIN HYATT FARBER SCHRECK
LLP

Jeffrey W. Crockett, Esq.
One East Washington Street, Suite 2400
Phoenix, Arizona 85004
Attorneys for Johnson Utilities, LLC

ORIGINAL and thirteen (13) copies of the
foregoing filed this 23rd day of March, 2012, with:

Docket Control
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

Copy of the foregoing hand-delivered
this 23rd day of March, 2012, to:

Yvette B. Kinsey, Administrative Law Judge
Hearing Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

Robin Mitchell, Chief Counsel
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

Steve Olea, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

COPY of the foregoing sent via e-mail
this 23rd day of March, 2012, to:

Craig A. Marks, Esq.
Craig A. Marks, PLC
10645 North Tatum Boulevard, Suite 200-676
Phoenix, Arizona 85028


14676211650779.10

1 Lat J. Celmins (004408)
lcelmins@mclawfirm.com
2 Michael L. Kitchen (019848)
mlkitchen@mclawfirm.com
3 MARGRAVE CELMINS, P.C.
8171 East Indian Bend Road, Suite 101
4 Scottsdale, Arizona 85250
Telephone: (480) 994-2000

5
6 Garrick L. Gallagher/Bar No. 009980
Anupam Bhatheja/Bar No. 022357
SANDERS & PARKS, P.C.
7 3030 North Third Street, Suite 1300
Phoenix, AZ 85012-3099

8
9 Garrick L. Gallagher
Direct Phone: (602) 532-5720
Direct Fax: (602) 230-5053
10 E-Mail: Garrick.Gallagher@SandersParks.com

11 Attorneys for Plaintiffs/Counterdefendants

12 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

13 **IN AND FOR THE COUNTY OF MARICOPA**

14 JOHNSON UTILITIES, LLC; THE CLUB
AT OASIS, LLC; GEORGE H. JOHNSON;
15 JANA S. JOHNSON; BRIAN F.
TOMPSETT,

16 Plaintiffs,

17 v.

18 SWING FIRST GOLF, LLC; DAVID
19 ASHTON,

20 Defendants.

21 SWING FIRST GOLF, LLC, an Arizona
limited liability company; DAVID ASHTON
22 and JANE DOE ASHTON, husband and
wife,

23 Counterclaimants,

24 v.

25 JOHNSON UTILITIES, LLC, d/b/a
26 JOHNSON UTILITIES COMPANY, an

Cause No. CV2008-000141

**PLAINTIFFS' NOTICE OF LODGED
PROPOSED JURY INSTRUCTIONS**

(Assigned to the Honorable Dean Fink)

1 Arizona limited liability company; THE
2 CLUB AT OASIS, LLC, an Arizona limited
3 liability company; GEORGE H. JOHNSON
4 and JANA S. JOHNSON, husband and wife;
5 BRIAN F. TOMPSETT and JANE DOE
6 TOMPSETT, husband and wife,

Counterdefendants.

7 Attached as exhibit A are proposed jury instructions and proposed verdict forms
8 previously submitted to the Court for consideration. The Court has requested that Plaintiff file
9 these instructions so that the record is established as to which additional instructions were
10 requested by Plaintiffs prior to submitting the case to the jury. Exhibit A contains Plaintiffs'
11 counsel's emails dated March 16, 2012 and March 19, 2012 addressed to the Court's chambers
12 enclosing Plaintiffs' additional proposed instructions and verdict forms.

13 RESPECTFULLY SUBMITTED this 22nd day of March, 2012.

14 SANDERS & PARKS, P.C.

15
16 By /s/ Anupam Bhatheja
17 Garrick L. Gallagher
18 Anupam Bhatheja
3030 North Third Street, Suit 1300
Phoenix, Arizona 85012-3099
Attorneys for Plaintiffs/Counterdefendants

19 Original of the foregoing e-filed this 22nd day
20 of March, 2012 with:

21 Clerk of the Court
22 Maricopa County Superior Court
201 West Jefferson Street
Phoenix, Arizona 85003-2243

23 Copy of the foregoing hand-delivered this 22nd
24 day of March, 2012 to:

25 The Honorable Dean Fink
26 Maricopa County Superior Court
Old Courthouse
125 West Washington, Room 202
Phoenix, AZ 85003

1 Copy of the foregoing mailed on this 22nd day
2 of March, 2012 to:

3 Craig A. Marks
4 Craig A. Marks, PLC
5 10645 N. Tatum Boulevard, Suite 200
6 Phoenix, AZ 85028
7 Attorneys for Defendants/Counterclaimants

8 Shawn E. Nelson
9 Law Offices of Shawn E. Nelson, P.C.
10 19420 N. 59th Avenue, Suite B225
11 Glendale, AZ 85308
12 Co-Counsel for Defendants/Counterclaimants

13 Michael L. Kitchen
14 Lat J. Celmins
15 Margrave Celmins, P.C.
16 8171 E. Indian Bend Road, Suite 101
17 Scottsdale, AZ 85250
18 Co-Counsel for Plaintiffs

19 By /s/ Donna K. Mitchell

EXHIBIT A

Donna K. Mitchell

From: Anoop Bhatheja
Sent: Friday, March 16, 2012 11:59 AM
To: Heather McFarland - SUPCRTX; Garrick L. Gallagher; 'Craig.Marks'
Cc: mlkitchen@mclawfirm.com
Subject: CV2008-000141 Johnson Utilities LLC v. Swing First Golf LLC
Attachments: jury_instruction_-_unjust_enrichment.doc; Supplemental_Jury_Instruction.docx;
jury_instruction_-_unjust_enrichment-void_or_illegal_contract.doc

Judge Rea,

Johnson Utilities has attached additional proposed jury instructions in word format.

Anoop

Jury Instruction: Unjust Enrichment

Counterclaimants claim that Counterdefendants were unjustly enriched. On this claim, Counterclaimants have the burden of proving:

- (1) an enrichment by Counterdefendants;
- (2) an impoverishment by Counterclaimants;
- (3) a connection between the enrichment and impoverishment;
- (4) the absence of justification for the enrichment and impoverishment; and
- (5) the absence of a remedy provided by law.

Source: Freeman v. Sorchych, 226 Ariz. 242, 251, 245 P.3d 927, 936 (App. 2011)

Jury Instruction: Unjust Enrichment; void or illegal contract

If the agreement between the parties is found to have been illegal or void, Counterclaimants are not entitled, by their unjust enrichment claim, to recover as damages the contract price.

Source: See Town of Holbrook v. Girand, 52 Ariz. 291, 297-298, 80 P.2d 695 (1938)

NONUNIFORM JURY INSTRUCTION DEFAMATION

Defamation:

- (1) In an action for defamation the plaintiff has the burden of proving, when the issue is properly raised,
 - (a) the defamatory character of the communication,
 - (b) its publication by the defendant,
 - (c) its application to the plaintiff,
 - (d) the recipient's understanding of its defamatory meaning,
 - (e) the recipient's understanding of it as intended to be applied to the plaintiff,
 - (f) special harm resulting to the plaintiff from its publication,
 - (g) the defendant's negligence, reckless disregard or knowledge regarding the truth or falsity and the defamatory character of the communication, and
 - (h) the abuse of a conditional privilege.

Source:

REST 2d TORTS § 613; Green Acres Trust v. London, 142 Ariz. 12, 688 P.2d 658, 665-666, affirmed in part and vacated in part 141 Ariz. 609, 688 P.2d 617 (1984).

Donna K. Mitchell

From: Anoop Bhatheja
Sent: Monday, March 19, 2012 8:25 AM
To: 'Heather McFarland - SUPCRTX' (hmcfarla@superiorcourt.maricopa.gov)
Cc: 'Craig Marks'; Garrick L. Gallagher; 'Michael Kitchen'; Shawn Nelson (shawn@northvalleylawfirm.com)
Subject: Additional Jury Instructions (defamation and quantum meruit).doc
Attachments: Additional Jury Instructions (defamation and quantum meruit).doc

Heather,

Attached are additional jury instructions related to defamation and unjust enrichment. Thanks,

Anoop Bhatheja
Sanders & Parks PC
602-532-5664 (phone)
602-230-5064 (fax)
Anoop.Bhatheja@sandersparks.com

Publication of defamatory matter is its communication intentionally or by a negligent act to one other than the person defamed.

RESTATEMENT 2d TORTS § 577.

One who publishes a defamatory statement of fact is not subject to liability for defamation if the statement is true.

RESTATEMENT 2d TORTS § 581A

Statements of opinion or rhetorical hyperbole do not constitute actionable defamation.

Turner v. Devlin, 174 Ariz. 201, 848 P.2d 286, 292-93 (Ariz. 1993) (

Quantum Meruit

Swing First is entitled to recover the reasonable value of the services rendered to Oasis unless you find that either one of two things was true in this case:

First, Swing First is not entitled to recover for his services if it was understood by Swing First and Oasis that the services were being rendered free of charge. It is Oasis' burden to show that the parties had such an understanding.

Second, Swing First may not recover for his services if you find that, under all the circumstances, it was not unfair for Oasis to receive the benefit of Swing First's services without paying for them.

Unless you find that Swing First and Oasis understood that the services were being rendered free of charge, or that under all the circumstances it was not unfair for Oasis to receive the benefit of those services without paying for them, you should award Swing First the reasonable value of the services. In determining what the reasonable value of Swing First's services was, you may consider the nature of the services provided and the customary rate of pay for such services.

CONTRACT RAJI 24

Donna K. Mitchell

From: Anoop Bhatheja
Sent: Monday, March 19, 2012 8:24 AM
To: 'Heather McFarland - SUPCRTX'
Cc: 'Craig Marks'; Garrick L. Gallagher; 'Michael Kitchen'; Shawn Nelson
(shawn@northvalleylawfirm.com)
Subject: Verdict Forms.doc
Attachments: Verdict Forms.doc

Heather,
Please find attached proposed verdict forms for Johnson Utilities.

Anoop Bhatheja
Sanders & Parks PC
602-532-5664 (phone)
602-230-5064 (fax)
Anoop.Bhatheja@sandersparks.com

BREACH OF CONTRACT – JOHNSON UTILITIES' CLAIM FOR NON-PAYMENT

(Finding for Plaintiff Johnson Utilities LLC)

(Water Billings)

We, the Jury, duly empaneled and sworn in the above entitled action, upon our oaths, do find in favor of Plaintiff Johnson Utilities LLC on its breach of contract claim and find the full damages to be \$ _____.

1. _____

5. _____

2. _____

6. _____

3. _____

7. _____

4. _____

8. _____

FOREPERSON

BREACH OF CONTRACT – JOHNSON UTILITIES' CLAIM FOR NON-PAYMENT

(Finding for Defendant Swing First Golf LLC)

(Water Billings)

We, the Jury, duly empaneled and sworn in the above entitled action, upon our oaths, do find in favor of Defendant Swing First Golf LLC on Johnson Utilities' breach of contract claim.

1. _____

5. _____

2. _____

6. _____

3. _____

7. _____

4. _____

8. _____

FOREPERSON

NEGLIGENCE

(Finding for Counterclaimant Swing First Golf LLC)

(Comparative Fault)

We, the Jury, duly empaneled and sworn in the above entitled action, upon our oaths, do find in favor of Counterclaimant Swing First Golf on its claim for negligence and find the full damages to be \$ _____.

We find the relative degrees of fault to be:

Swing First Golf _____ %

Johnson Utilities LLC _____ %

Total 100%

Note: You may not award punitive damages against Johnson Utilities LLC unless you have first found against Johnson Utilities LLC and awarded Swing First Golf actual damages.

Based on clear and convincing evidence of evil mind, we assess punitive damages against Johnson Utilities LLC as follows:

\$ _____ (stating the amount or, if none, write the word "none").

1. _____

5. _____

2. _____

6. _____

3. _____

7. _____

4. _____

8. _____

FOREPERSON

NEGLIGENCE

(Finding for Counter-Defendant Johnson Utilities LLC)

We, the Jury, duly empaneled and sworn in the above entitled action, upon our oaths, do find in favor of Counter-Defendant Johnson Utilities LLC on Swing First's claim for negligence.

1. _____

5. _____

2. _____

6. _____

3. _____

7. _____

4. _____

8. _____

FOREPERSON

TRESPASS

(Finding in Favor of Counterclaimant Swing First Golf LLC)

We, the Jury, duly empaneled and sworn in the above entitled action, upon our oaths, do find in favor of Counterclaimant Swing First Golf LLC on its trespass claim and find the full damages to be \$ _____.

Note: You may not award punitive damages against Johnson Utilities LLC unless you have first found against Johnson Utilities LLC and awarded Swing First Golf actual damages.

Based on clear and convincing evidence of evil mind, we assess punitive damages against Johnson Utilities LLC as follows:

\$ _____ (stating the amount or, if none, write the word "none").

1. _____

5. _____

2. _____

6. _____

3. _____

7. _____

4. _____

8. _____

FOREPERSON

TRESPASS

(Finding in Favor of Counter-Defendant Johnson Utilities LLC)

We, the Jury, duly empaneled and sworn in the above entitled action, upon our oaths, do find in favor of Counter-Defendant Johnson Utilities LLC on Swing First's trespass claim.

- | | |
|----------|----------|
| 1. _____ | 5. _____ |
| 2. _____ | 6. _____ |
| 3. _____ | 7. _____ |
| 4. _____ | 8. _____ |

FOREPERSON

QUANTUM MERUIT / UNJUST ENRICHMENT

(Finding in Favor of Counterclaimant Swing First Golf LLC)

(OASIS MANAGEMENT SERVICES)

We, the Jury, duly empaneled and sworn in the above entitled action, upon our oaths, do find in favor of Counterclaimant Swing First Golf LLC on its unjust enrichment claim and find the full damages to be \$ _____.

1. _____

5. _____

2. _____

6. _____

3. _____

7. _____

4. _____

8. _____

FOREPERSON

QUANTUM MERUIT / UNJUST ENRICHMENT

(Finding in Favor of Counter-Defendant Johnson Utilities LLC)

(OASIS MANAGEMENT SERVICES)

We, the Jury, duly empaneled and sworn in the above entitled action, upon our oaths, do find in favor of Counter-Defendant Johnson Utilities LLC on Swing First's unjust enrichment claim.

1. _____

5. _____

2. _____

6. _____

3. _____

7. _____

4. _____

8. _____

FOREPERSON

BREACH OF CONTRACT – COUNTERCLAIM BY SWING FIRST

(Finding in Favor of Counterclaimant Swing First Golf LLC)

(Tariff Rate Schedule)

We, the Jury, duly empaneled and sworn in the above entitled action, upon our oaths, do find in favor of Counterclaimant Swing First Golf LLC on its breach of contract claim and find the full damages to be \$ _____.

1. _____

5. _____

2. _____

6. _____

3. _____

7. _____

4. _____

8. _____

FOREPERSON

BREACH OF CONTRACT – COUNTERCLAIM BY SWING FIRST

(Finding in Favor of Counter-Defendant Johnson Utilities LLC)

(Tariff Rate Schedule)

We, the Jury, duly empaneled and sworn in the above entitled action, upon our oaths, do find in favor of Counter-Defendant Johnson Utilities LLC on Swing First's breach of contract claim.

1. _____

5. _____

2. _____

6. _____

3. _____

7. _____

4. _____

8. _____

FOREPERSON

DEFAMATION

(Finding in Favor of Counterclaimant David Ashton)

We, the Jury, duly empaneled and sworn in the above entitled action, upon our oaths, do find in favor of Counterclaimant David Ashton on his defamation claim and find the full damages to be \$ _____.

Note: You may not award punitive damages against Johnson Utilities LLC and George H. Johnson unless you have first found against Johnson Utilities LLC and George H. Johnson and awarded David Ashton actual damages.

Based on clear and convincing evidence of evil mind, we assess punitive damages against Johnson Utilities LLC and George H. Johnson as follows:

\$ _____ (stating the amount or, if none, write the word "none").

1. _____

5. _____

2. _____

6. _____

3. _____

7. _____

4. _____

8. _____

FOREPERSON

DEFAMATION

(Finding in Favor of Counter-Defendants Johnson Utilities LLC and George Johnson)

We, the Jury, duly empaneled and sworn in the above entitled action, upon our oaths, do find in favor of Counter-Defendants Johnson Utilities LLC and George Johnson on David Ashton's defamation claim.

1. _____

2. _____

3. _____

4. _____

5. _____

6. _____

7. _____

8. _____

FOREPERSON